



## Personnel and Administrative Policy and Procedure

<b>SUBJECT: Discrimination and Harassment</b>	<b>EFFECTIVE DATE:</b> December 15, 2007 <b>REVIEWED:</b> <b>REVISED:</b> December 2012
<b>CATEGORY: 200</b> <b>POLICY NUMBER: 200.12</b>	<b>CROSS REFERENCE:</b>

**Purpose:** The purpose of this policy is to reaffirm the City's commitment to equal employment opportunity and to providing a harassment and discrimination free work environment for all employees.

### Definitions

- **Discrimination:** An act having adverse effect on one or more individuals because of political affiliation, protected activity, race, national origin, age, sex, religious affiliation, marital status, mental or physical disability (as defined by the Americans with Disabilities Act {ADA}), gender, sexual orientation, veteran status or any other protected class under State and/or Federal law and which under the law may not be considered as a basis for the act. It may be intentional or non-intentional.
- **Harassment:** Any verbal or physical conduct that is derogatory or shows hostility towards an individual and
  1. Has the purpose or effect of creating an intimidating, hostile, abusive, or offensive work environment; or
  2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
  3. Otherwise adversely affects an individual's employment and employment related opportunities.
- **Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, or other verbal, physical or visual conduct of a sexual nature when one of the following occurs:
  1. Submission to such conduct is an explicit or implicit term or condition of an individual's employment;
  2. Submission to or rejection of the conduct by an individual is used as a basis for employment decisions; or
  3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- **Unlawful Harassment:** any harassment as defined above that is based on a protected class status or singles someone out because of a protected class status.
- **Intentional Discrimination:** Bias or prejudice toward a group, which is directed toward a certain individual.
- **Different Treatment:** Treating members of one group differently than others unless it is necessary to the normal operation of the employer's business.
- **Present Effects of Past Discrimination:** Policies or practices fair in form, but discriminatory in effect.
- **Adverse or Disparate Impact:** Using a neutral policy or requirement that limits employment opportunities for certain groups that is statistically measurable. Generally, when the rate is less than 4/5 or 80% of the rate for the group with the highest selection rate, this is regarded as constituting evidence of adverse impact.
- **Failure to Reasonably Accommodate:** Failing to adapt the rules or work conditions to accommodate a person's religious beliefs or physical/mental impairments so that they have the same opportunity as

everyone else to work, access programs, activities, and services.

- **Retaliation:** Treating someone negatively or differently because that person has filed a complaint under this or the Equal Employment Opportunity policy or other civil right laws or participated in someone else's complaint by testifying.

**Objective:** To ensure the City maintains a workplace for its employees which is free of harassment, discrimination and retaliation.

**Scope:** This procedure covers all employees of the City.

**Policy:** Harassment and discrimination is prohibited in the workplace or in any work related setting outside the workplace. Every individual has the right to work in a professional atmosphere that promotes employment opportunities and prohibits discriminatory and harassing practices. Workplace harassment and discrimination manifest in two primary ways:

1. In forms of harassment and discrimination that violate state and federal laws; and
2. In forms of harassment and discrimination that may not violate law, but which violate this City rule because they are not conducive to creating a work environment for employees that is consistent with the intent of this rule.

This policy applies to both types of behaviors. Workplace harassment not only applies to harassment by co-workers but also harassment of an employee by a non-employee such as a contractor or customer. Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of discrimination and harassment.

**Examples of Prohibited Conduct:** This list is intended as examples only and is not all-inclusive.

- Use of epithets, innuendos or slurs because an individual's actual or perceived protected class status as listed above.
- Jokes, pranks or other banter, including negative stereotyping, that is derogatory or shows hostility because of an individual's actual or perceived protected class status as listed above.
- Unwelcome physical touching or contact, such as pinching, kissing, grabbing, patting or hugging.
- Written or graphic material that is disparaging or displays hostility on the basis of a protected class status as listed above and is placed on walls or elsewhere in on the City's premises or equipment or circulated in the workplace.
- Inappropriate jokes or other written or graphic materials via e-mail, the Internet or by fax, or downloading this material from the Internet.

### Retaliation

Retaliation against any employee because he or she has filed a discrimination or harassment complaint or furnished information or participated in any investigation, compliance review, or hearing under this policy is prohibited.

Any employee who believes he or she has been retaliated against for filing a complaint or otherwise participating in any investigation under this policy should report the circumstances immediately to the Human Resources Director.

In those cases where unlawful discrimination or harassment, or retaliation is established, the City will take appropriate disciplinary action up to and including dismissal.

**Guidelines:** Managers and supervisors are expected to enforce this rule and maintain a productive, non-hostile work environment. Managers and supervisor must take immediate action to stop and prevent discrimination or harassment, where they know or have reason to know that it is occurring. Tacit approval of discrimination and/or harassment by, for example, laughing and treating a situation as a joke, failing to take action or advising an employee not to complain is prohibited.

Managers and supervisors are responsible for ensuring that notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, that are derogatory or show hostility toward an individual or group are removed. If a supervisor receives a complaint from a City employee, an applicant, a member of the public or a contractor about discrimination, harassment or retaliation in a City worksite, they should contact the Human Resources Director as soon as possible but no later than one or two working days after receiving the complaint. This is to be done even if the person making the complaint requested that the information be kept confidential. Supervisors who are aware of harassment or discrimination and condone it by action or inaction will be subject to disciplinary action.

## **Procedures**

### **1. Reporting**

Any employee or applicant for employment who feels he/she has been the victim of discrimination or harassment or who has knowledge of any discrimination or harassment, is to report the matter immediately to their supervisor, another management employee within the City, or the Human Resources Director. These multiple options for presenting a complaint are made available with the intent of giving the employee the opportunity to select a person with whom he/she feels most comfortable. A supervisor has a responsibility to report knowledge of any harassment or discrimination to the HR Director.

An employee may file a complaint orally or by submitting it in writing, using the **attached form**. All written complaints should be forwarded to the Human Resources Director.

### **2. Receipt of Complaint**

The Human Resources Director upon receipt of such a complaint will complete the following steps:

- A. Maintain the confidentiality of the incident and the parties to the extent possible while still following the policy and requirements of the law.
- B. Document the discussion and any subsequent action.
- C. Evaluate the complaint.
- D. Determine whether there is reason to believe prohibited discrimination or harassment may have occurred.
- E. If there may have been prohibited conduct, the Human Resources Director will work in conjunction with the immediate supervisor and the Department Director to promptly conduct an investigation of the complaint. If the HR Director is named in the complaint an alternative resources such as the City Attorney will be used to investigate the claim. Confidentiality will be maintained to the extent practicable while still conducting the necessary investigation.

#### **When an incident warrants an investigation:**

- a) The Human Resources Director will discuss the decision to investigate with the complainant, and other managerial/supervisory staff as may be necessary.
- b) The City Manager, appropriate Department Director and immediate supervisor will be notified. An investigation will be conducted which may result in disciplinary action of the alleged harasser. (Representation requests by City bargaining unit members will be honored).
- c) At an appropriate time, consistent with conducting the investigation, the affected persons will be instructed against taking punitive or retaliatory actions.

- d) The Human Resources Director, or designee, will conduct a thorough and impartial investigation to determine whether the discrimination or harassment is substantiated, and recommend appropriate corrective action to the responsible Department Director and City Manager.
- e) The Human Resources Director will provide written notification to the complainant of the determination and whether or not disciplinary or remedial action is recommended. The Human Resources Director will notify the complainant if additional time is needed to complete the investigation and reach a determination.
- f) Document what action and resolution efforts were taken and then communicate the results to the complainant, to management and to the accused.
- g) In determining the appropriate corrective action the totality of the situation and prior discipline of the accused will be considered.
- h) If the employee making the complaint of alleged discrimination or harassment is dissatisfied with the decision of the City, he or she, or a representative may file a complaint with the Oregon Bureau of Labor and Industries or the Federal Equal Employment Opportunity Commission.

When an issue or concern indicates a need to raise awareness or to alert attention but does not require an investigation:

- a) Human Resources will notify appropriate managers or supervisors that a problem has been noted and that preventive action is necessary.
- b) Human Resources will offer suggestions to managers or supervisors on preventative actions such as training or awareness programs, counseling interventions, mediation, and staff discussions on ways to correct or reduce the problem.

## **Responsibilities**

### All Employees:

- Refrain from engaging in behaviors, which constitute harassment or discrimination.
- If you are comfortable doing so, tell employees who violate this rule to stop the behavior.
- Report any actual or potential harassment or discrimination to the Human Resources Director, the immediate supervisor or any supervisor in the City.
- Retaliation against a co-worker for filing a complaint or for participating in an investigation is strictly prohibited.

### Managers and Supervisors:

- Monitor and ensure that work and program areas are free from discrimination and harassment.
- Take any complaints of harassment or discrimination seriously.
- Report any actual or potential harassment, discrimination or retaliation to the Human Resources in order to determine appropriate action to take.
- Department Heads and immediate supervisors have a responsibility to act on substantiated claims of harassment or discrimination to remedy the situation.

Note: Personal liability is possible for supervisors if they ignore harassment in the workplace.

### Human Resources:

- Work with the department to conduct an investigation. HR will act as the fact finder and make a recommendation back to the department director and immediate supervisor.

- Work with the department to see that appropriate action is carried out and that the victim is not subjected to retaliation.
- Human Resources and/or the manager/supervisor may follow up with the complainant periodically to ensure there has been no retaliation for making the complaint.

**Attachment: Discrimination or Harassment Complaint Form**

**References:**

EXTERNAL COMPLAINT PROCEDURE

Complaints of harassment or discrimination may be filed with the following state and federal agencies:

1. For allegations of State Civil Rights Laws violations:  
Oregon Bureau of Labor and Industries  
Civil Rights Division  
Suite 1070  
800 NE Oregon #32  
Portland, Oregon 97232  
(503) 7314075
2. For allegations of Title VII Civil Rights Laws violations:  
Equal Employment Opportunity Commission  
2815 2nd Avenue, Suite 500  
Seattle, Washington 98121
3. For allegations of violation of the Equal Pay Act of 1963, Age Discrimination in Employment Act (ADEA), or employment-related violations of the Americans with Disabilities Act:  
Equal Employment Opportunity Commission  
2815 2nd Avenue, Suite 500  
Seattle, Washington 98121
4. For allegations of violation of the Americans' With Disabilities Act other than employment-related:  
Department of Justice  
Civil Rights Division  
800 Oregon #32  
Suite 1070  
Portland, OR 97232

**CITY OF MILWAUKIE  
DISCRIMINATION and HARASSMENT COMPLAINT FORM**

1. Name(s) of complainant(s): \_\_\_\_\_
2. Name(s) of person(s) who is alleged to have discriminated or harassed the complainant(s):  
\_\_\_\_\_
3. Name(s) of witnesses: \_\_\_\_\_
4. The date(s) the incidents took place, which you consider, to be harassing or discriminating: \_\_\_\_\_
5. Describe how the discrimination or harassment occurred, specifically what was said and/or done, by whom, and whether the incident was isolated or part of a continuing practice.
6. List the relevant documents, if any that should be reviewed as part of the complaint investigation process and attached to this form.
7. List any action taken by complainant or other on complainant's behalf, to address/correct the situation.
8. List the corrective action desired.
9. Other comments or concerns related to this complaint

Date Submitted to the City of Milwaukie: \_\_\_\_\_

\_\_\_\_\_  
Signature of Complainant

Phone Number: \_\_\_\_\_

**Attach additional sheets, if needed.**

Submit completed complaint form to the Human Resources Director at the City of Milwaukie, Human Resources Department. 10722 SE Main St. Milwaukie OR 97222: 503-786-7506.

Accommodation is available if needed to complete this form.